IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 13971 of 2004

Between:
Polymastics, Rep. by its Proprietor
M. Veeranarayana Reddy s/o Anki Reddy, aged about 61 years,
R/o 1-779,
Dwarakanagar, Kadapa,Kadapa District.

... PETITIONER

AND

1 The Superintendent Engineer (R&B), National Highways, Ananthapoor,
Ananthapoor District.
2 The Executive Engineer (R&B), National Highways Division,
Kurnool, Kurnool District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the respondents in inviting the tender notice i.e., Short C.T. notice No. 6/2004-2005 dated 28-7-2004 for supply of the product of a particular firm i.e., 3M as illegal, arbitrary, unreasonable, unconstitutional, discriminatory and against the fundamental rights conferred under Articles 19(1) (g) and 14 of the Constitution of India and consequently direct the respondents to issue fresh tender notice inviting the bids for supply of reflective raised pavement markers without mentioning the name of any of the firm and only mentioning the name of the products and its specifications and to pass any such order or orders as this Court deems fit

and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.T.RAJENDRA PRASAD

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court at the admission stage made the following:

ORDER:

1. The second respondent issued a tender notice on 28-7-2004 inviting sealed tenders from the registered contractors for supply and fixing of reflective pavement markers on National Highway No.18. The date of receipt of application and issue of tender schedules was from 28-7-2004 to 10-8-2004 and the date of receipt of the tender was 11-8-2004 up to 3 p.m. and the opening of the tenders was fixed at 3-30 p.m. on 11-8-2004. In the said tender notice the second respondent described the markers as “reflective 3M raised permanent markers”. The petitioner firm represented by its Proprietor claims that he is a distributor and authorized representative of “Swareflex”, which belongs to Swarosvic product group of international reputation. The firm is manufacturing road safety products, including the reflective raised pavement markers. The petitioner contends that “3M” mentioned in the tender notice is the name of a company. Since he is not the distributor of the products of “3M” company, he could not file its tender. He therefore approached this Court through this writ petition seeking to declare the

action of the respondents in issuing the tender notice on 28-7-2004 for supply of the product of a particular firm viz., "3M" as illegal, arbitrary, discriminatory and against the fundamental right conferred under Articles 19 (1)(g) and 14 of the Constitution of India and consequently to direct the respondents to issue a fresh tender notice inviting bids for supply of reflective pavement markers without mentioning the name of any of the firms by giving only the specifications of the product required to be supplied.

2. The petitioner further contended that the action of the second respondent in mentioning the name of 3M Company in the tender notice is creating monopoly in favour of a particular firm and it was done with an intention to award the work to the said firm. By selecting a single manufacturer, a monopoly is sought to be created in its favour, excluding the other manufacturers, which clearly violates the fundamental right of the manufacturers.

3. The petitioner also contended that in Condition No.6 of the tender notices it was mentioned that the bids with glass beads/elements shall be summarily disqualified. He therefore submits that the incorporation of the said condition is illegal and arbitrary. The glass element road studs have much higher strength than the plastic road studs i.e., reflective pavement markers. The respondents have disqualified the glass bids/elements with an intention to eliminate some of the manufacturers. The action of the respondents in incorporating Condition No.6 in the tender notice is illegal and arbitrary. The

petitioner therefore seeks the directions mentioned above to enable him to avail the opportunity of offering his bid for the said contract work.

4. The respondents resisted the petition through a counter-affidavit and it reads briefly as follows:

5. The tenders were invited for the supply and fixing of reflective 3M pavement markers for fixing them on National Highway No.18 viz., Chittoor to Kurnool Road from Kilometre No.319/6 to 324/6 and 350/0 to 360/0. In pursuance of the said tender notice, two agents of 3M Limited Traffic Safety Systems have purchased and submitted their tenders for the supply of 3M reflective pavement markers. The petitioner did not submit any tender for supply of his commodity SWARFLEX. While mentioning the name of the required product as reflective 3M raised pavement markers, 3M has been inadvertently used in the tender notice, but every manufacturer who satisfies the special conditions and conditions of brief tender notice are eligible to submit their tenders and the writ petitioner is also eligible to submit its tender, if it is able to satisfy the conditions and special conditions mentioned in the tender notice. The performance of 3M studs was found good to have preliminary estimate of the work. The same has been adopted and accordingly the letter "3M" are retained in the specifications in the bid notice. The notice is open to all manufacturers and reputed firms who can supply the raised pavement markers of the specifications contained in the tender notice. It has not been mentioned to supply raised pavement markers from 3M

company only. In special condition No.5 all the detailed specifications have been given and the bid is open to all manufacturers and firms who can satisfy the detailed specifications. As per condition No.9 of the tender notice, a sample of the stud confirming to the specifications mentioned in the tender notice shall be submitted by the bidders along with the tender documents. The bid is open for all the manufacturing firms who produce all the relevant products and certificates mentioned at Points No.1 to 7 of the special conditions. The bidders who fail to produce the necessary certificates or documents will be disqualified. There is no bar for any manufacturer or manufacturing company to submit the tenders. Since the offer is open for all manufacturers, the writ petitioner cannot question the validity of the tender notification. The writ petition is therefore liable to be dismissed.

6. The contention of the petitioner is that the respondents intentionally called for the tender of the product of only one firm. It amounts to creating monopoly in favour of a particular firm and as it is violative of the fundamental right guaranteed under Article 19 (1)(g) of the Constitution of India, therefore, the tender notice is liable to be quashed. In the counter-affidavit, the respondents took a specific plea that the tender is open for all manufacturers, who are qualified and who are in a position to supply the product with the specifications mentioned in the tender notice. It is the further plea of the respondents that the word “3M” which indicates the name of a

particular firm has been inadvertently mentioned in the tender notice, but the intention of the respondents was to receive tenders from all the manufacturers or dealers of the product "reflective raised pavement markers". It is made to understand from the averments of the counter affidavit that the intention of the respondents was to call for tenders from all eligible manufacturers, who are ready to conform to the standards prescribed in the tender notice. But, since the respondents described the product as "reflective 3M raised pavement markers", it created an impression among the contractors that the tender was intended to get the product of only one company, therefore, they could not come forward with their offers to undertake the work. Though the word "3M" was inadvertently mentioned in the tender notice, it sent wrong signals to all the manufacturers of the relevant product by making them to doubt the sincerity of the respondents in inviting an open tender. In order to dispel the apprehension of the petitioner and the other manufacturers of the said product, that the respondents resorted to favour a particular company for supply of the required product, it would be appropriate to direct the respondents to issue a fresh tender notification without mentioning the name of any firm, but by mentioning the required specifications of the product so as to enable all the concerned manufacturers who are capable of supplying and fixing the same to offer their bids.

7. In view of the specific version of the respondents that the tender was intended to invite all manufacturers, who

are manufacturing the product with the specifications mentioned in the tender notice, and in view of the observations made supra, I am of the opinion that the issue as to whether calling for tenders for the product of a particular manufacturer is violative of Articles 19 (1)(g) and 14 of the Constitution of India and amounts to encouraging monopoly is left open, as the answering of it becomes academic in this matter.

8. The other contention of the petitioner is that the Condition No.6 of the tender notice viz., "the bids with glass beads/elements shall be summarily disqualified" incorporated by the respondents in the tender notice is illegal and arbitrary. A person who intends to participate in the tender cannot dictate terms to the person who issued the tender notification as to what specifications they are expected to fix. It is for the respondents to take a decision as to what are the specifications with which they are requiring a product and when the requirement of such specifications is to maintain quality and to protect the interests of the public, it cannot be said to be illegal, arbitrary or unreasonable. Those who are manufacturing the product with the specifications mentioned in the notification will only come forward to participate in the bid, therefore, the contention of the petitioner that Condition No.6 of the tender notice is illegal, arbitrary and unreasonable cannot be accepted.

9. In the result, the writ petition is allowed in part. The tender notification dated 28-7-2004 issued by the second respondent is set aside. The second respondent is at liberty to

issue fresh tender notification without mentioning the name of any company, but by mentioning the specifications for supply of the product “reflective raised pavement markers”. The second respondent is at liberty to retain all such conditions, special conditions and specifications, which ever is necessary to get a quality product for the purpose mentioned in the impugned tender notice. The petitioner is also at liberty to participate in the bid, if it has the capacity to supply the product with the specifications mentioned in the impugned tender notice.

10. The plea of the petitioner regarding Condition No.6 of the tender notice is rejected.

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(Dr.G.YETHIRAJULU, J)

23rd September 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Superintendent Engineer (R&B), National Highways, Ananthapoor,
Ananthapoor District.

2 The Executive Engineer (R&B), National Highways Division, Kurnool, Kurnool District.

3 The Government Pleader for Roads and Buildings.

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